IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 6792 of 1988
with
SPECIAL CIVIL APPLICATION NO. 6572 OF 1988

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHARATKUMAR NAVNITLAL KOTHARI

Versus

COLLECTOR OF SABARKANTHA

Appearance:SCAs6792/88&6572/88
MR. S.I. NANAVATI for Petitioner
MRS. HARSHA DEVANI AGP for Respondent No. 1
MR VIJAY H PATEL for Respondent No. 2, 3
MR VH PATEL for petitioner
MRS. HARSHA DEVANI AGP for State

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI

Date of decision:17/02/2001

COMMON C.A.V. JUDGEMENT

(Per : CHIEF JUSTICE MR DM DHARMADHIKARI)

#. These two writ petitions are cognate matters and are, therefore, decided by this common order. All the petitioners in these two petitions claim right of purchase of the plot of land already in their occupation under a temporary lease from the Nagar Palika, Modasa. There were interse conflicts of interest on the claim for plot of land between Bharatkumar Navnitlal Kothari (petitioner in SCA 6792/88) and Kantilal Somalal Bhavsar, Ramanlal Chhaganlal Panchal and Aswinkumar Ambalal Panchal heir of Ambalal Ranchhoddas Panchal (petitioners in SCA 6572/88). The interse conflict between the petitioner no longer exists and now all the petitioners in both the writ petitions feel aggrieved by the orders of Additional Chief Secretary, Revenue Department (Appeals), Ahmedabad dated 30-8-1988 passed in the case of Bharatkumar Navnitlal Kothari (SCA 6792/88) and 17-8-1988 passed in the case of Kantilal Somalal Bhavsar and others (SCA 6572/88).

#. The brief facts necessary to be mentioned are that all the petitioners occupied small pieces of land facing the road and are carrying on their business by raising superstructures. Earlier, they were granted temporary leases by the Nagar Panchayat, Modasa. They, thereafter, applied for sale of land in their favour. The Modasa Nagar Panchayat passed a resolution on 16-10-1984 resolving to sell the land in question to petitioner Bharatkumar Navnitlal Kothari (SCA 6792/88). The resolution was sent for approval of the Deputy Collector as the Competent Authority under Section 98 of the Gujarat Panchayats Act, 1961 (for short `the Act'). The Competent Authority refused to grant the approval for sale on the ground that the land may be required for widening of the road because it is also not away from the prescribed distance from the main road. Against the refusal of grant of approval to the sale by the Competent Authority, the petitioner Bharatkumar Navnitlal Kothari preferred revision application under Section 211 of the Bombay Land Revenue Code (for short `the Code') to the Secretary of the Government in the Department of Panchayat, Housing and Urban Development. The Revisional Authority in exercise of powers under Section 211 of the Code set aside the order of the District Collector, Sabarkantha refusing to grant sanction of approval to the proposed sale by the Nagar Panchayat and remanded the matter to the Collector, Sabarkantha with specific directions to pass orders for sanctioning the land in question to the petitioner on permanent sale. Consequent upon the order of remand, the Collector, Sabarkantha, by order dated 13-9-1984 granted permission for sale of land

to the applicant on conditions mentioned therein. The order of Collector, Sabarkantha, was then challenged by petitioners in SCA 6572/88 by preferring a Revision Application under Section 305 of the Act. The Revisional Authority, being the Additional Chief Secretary, Revenue Department (Appeals), by the impugned order dated 30-8-1988 set aside the order of Collector, Sabarkantha granting permission for sale of land on permanent basis to the petitioner Bharatkumar Navnitlal Kothari. The Revisional Authority held that the petitioner Bharatkumar Navnitlal Kothari is an encroacher on the plot of land for which he subsequently obtained some temporary lease for a period of less than 3 years. The piece of land 18.85 sq.mts. is in north-east of the town and is very close to the Centre of major road to Meghraj. It is also to the west of highway Modasa-Shamlaji. It was found that the land in question is part of major district road. It is held that in such a situation it was not proper for the Nagar Panchayat to resolve to sell the land and for the Collector to approve the same. So far as earlier order of Secretary acting as Revisional Authority under Section 211 of the Code of remanding the matter for grant of permission is concerned, the Revisional Authority acting under Section 305 of the Act held that in exercise of powers under the Code, such an order of remand directing permission for sale could not have been passed.

#. Learned counsel Shri S.I. Nanavati appearing for Bharatkumar Navnitlal Kothari (petitioner in SCA 6792/88) has raised a question of jurisdiction of the Revisional Authority in passing the impugned order. The submission made is that the same Revenue Secretary was invested with power under Section 211 of the Code and Section 305 of the Act. The earlier Revisional Authority having remanded the matter directing grant of permission for sale, the same Revisional Authority could not have sat over the judgment of the earlier Revisional Authority. There has thus been a conflict of jurisdiction in exercise of powers by two persons occupying the position of Revisional Authority.

#. This argument, although attractive, has no merit. It is apparent from the order dated 12-6-1984 passed by Secretary, Arbitration, Panchayat Housing and Urban Development that his powers of revision under Section 211 of the Code were invoked. The Revisional Authority may be the same for exercise of powers under Section 211 of the Code and Section 305 of the Act, but, the Revisional Authority misdirected itself in assuming power under only Section 211 of the Code. The Revisional Authority was also oblivious of the fact that the land in question

being part of the road, was causing nuisance to the public and passers-by. The plot of land in question was also likely to be required for widening of the road and to avoid congestion of traffic. The Revisional Authority exercising power under Section 211 of the Code totally ignored the provisions of Section 98 of the Act and the Ribbon Rules which lay down guidelines for permitting construction at a safe distance from the State Highway or internal road within the Panchayat. Section 98 of the Act reads as under:-

"98.(1) Subject to the provisions of sub-section (2), no lease, sale or other transfer of any immovable property vesting in, or acquired by, a Panchayat shall be valid unless such lease, sale or other transfer has been made with the previous sanction of the competent authority.

(2) In the case of a lease of immovable property other than the property vesting in the Panchayat under section 96, no such previous sanction shall be necessary, if the period of lease does not exceed three years."

#. From the aforesaid quoted provision, it is clear that previous sanction of Competent Authority is necessary before the Panchayat resolves to sell the land. The sanction sought was rejected on valid grounds. The Revisional Authority, whose power under Section 211 of the Code was invoked, was not conscious of the provisions of the Act and particularly Section 98 and all other relevant factors which had resulted in rejection of permission to sell by the Collector. The earlier order of the Revisional Authority, passed in exercise of powers under Section 211 of the Code was, therefore, non-est and could have been ignored by the subsequent Revisional Authority when its powers were invoked validly under Section 305 of the Act.

#. Learned counsel Shri Vijay H. Patel appears for the petitioners in SCA 6572/88. The main effort made by the counsel on behalf of the petitioners is that the plots of land on which they are carrying on their occupation does not violate Rekha Niyantran Na Niyam (popularly known as `Ribbon Rules'). Attempt was made to point out that it is beyond the prohibited range from the highway. What I find from the impugned order of the Revisional Authority dated 30-8-1988 in the case of Kantilal Somalal Bhavsar and others (SCA 6572/88) is that the Revisional Authority found that the land in question is near the junction of city road and the highway. The Meghraj-Modasa road is the main road and it joins the main highway little far

from there. According to the Revisional Authority, it would not be proper to allow permanent construction and create obstruction at the said place in the use of the road by public.

#. The Revisional Authority, therefore, was right in holding that the relevant consideration that the plot of land is not far away from the junction of important road and the highway was overlooked by the authorities in recommending grant of permission for sale of land. The petitioners can claim no indefeasible right of grant of permission of sale of land merely because they continue to hold the possession of the land initially under a temporary lease and thereafter under an interim protective order of stay from this Court. The public interest in such matters is of uppermost importance. The Revisional Authority has kept it in view in rejecting the permission for sale.

#. Consequently, both the petitions fail and are hereby dismissed. There has been a massive disaster of earth quake recently on 26-1-2001 in Gujarat. General life has been totally disturbed and several houses have been razed to the ground. In these circumstances, the petitions are dismissed, but the petitioners are granted six months time to vacate the plot of land and to shift to alternative site but on their submitting a written undertaking to the Authorities and to this Court within a period of one month that they would ungrudgingly vacate on expiry of period of six months.

Rule issued in both the petitions is discharged.
In the circumstances, I also leave the parties to bear their own costs.

(D.M. DHARMADHIKARI, C.J.)

[sndevu]